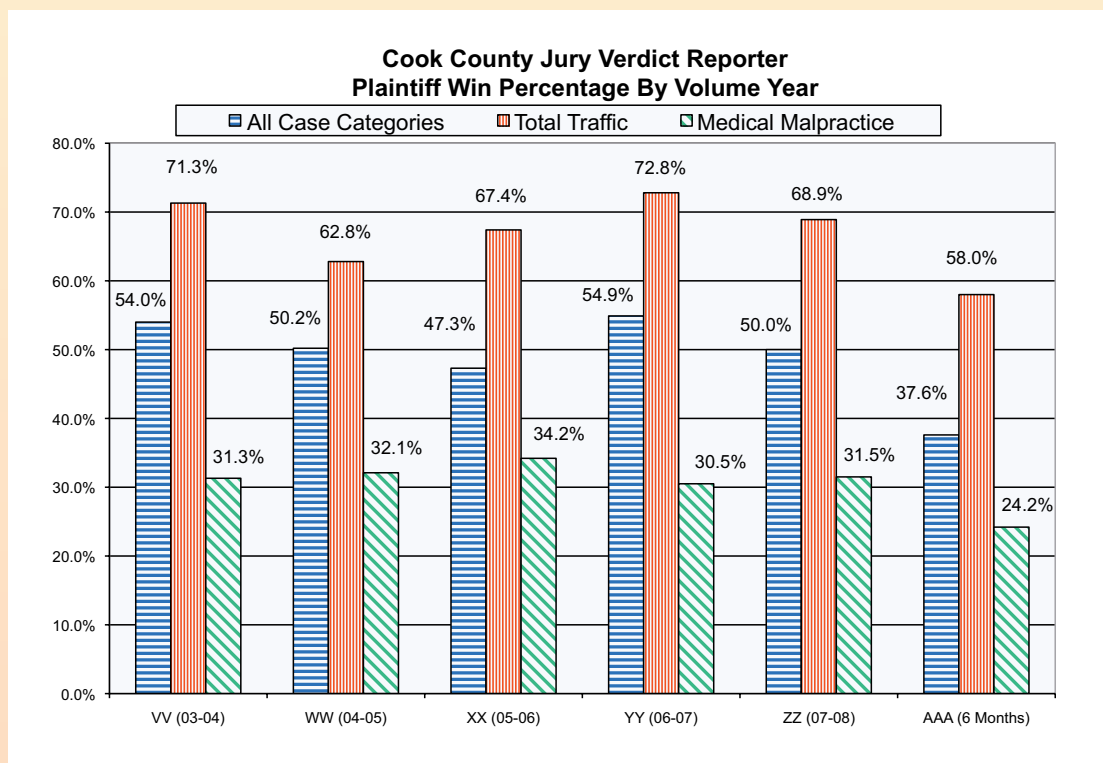


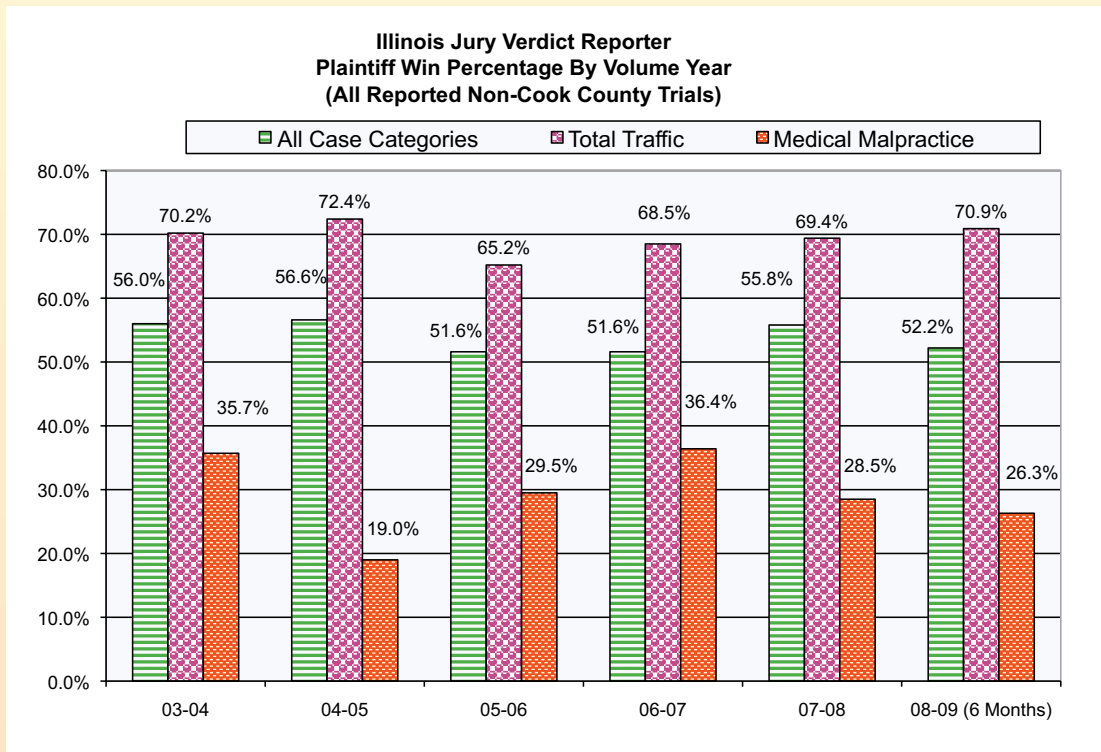
Where Have the Plaintiffs' Verdicts Gone?

By John L. Kirkton

For the first six months of the Jury Verdict Reporter's 2008-2009 volume year¹, Illinois juries from outside of Cook County are returning civil verdicts for plaintiffs at a rate significantly higher than Cook County juries. This is a remarkable turn of events since, historically, many trial attorneys have viewed Cook County as more "plaintiff friendly" than nearly all other Illinois venues.² However, increasingly frequent defense verdicts in Cook County jury trials are calling this perception into question.



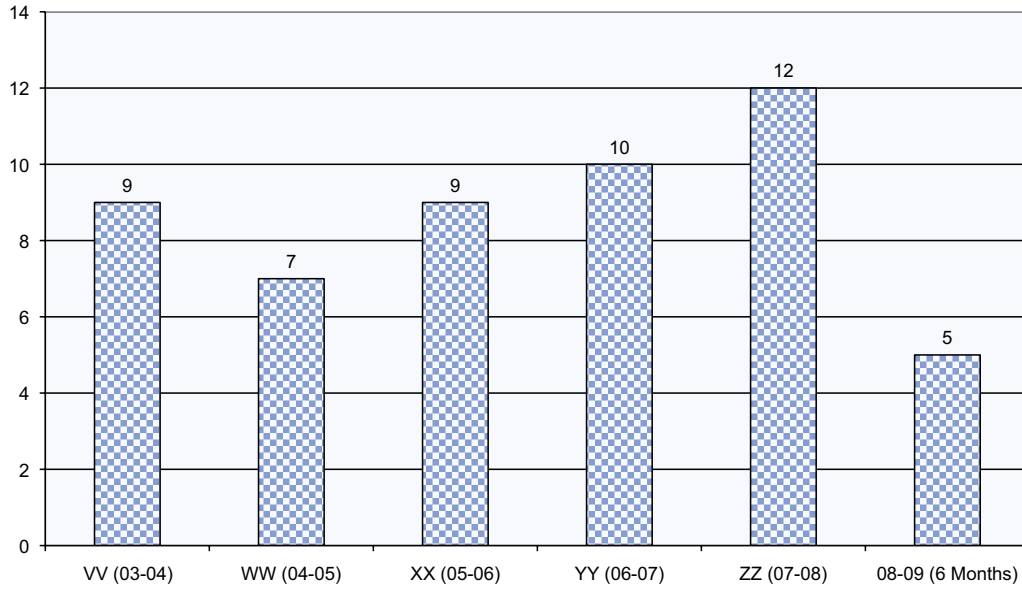
For jury trials reported in the first 26 weekly issues of the current Cook County Jury Verdict Reporter volume, plaintiffs have won awards in only 37.6% of the cases when all case categories are included.³ Over the five prior volume years, the Cook County plaintiff win rate has ranged from a low of 47.3% to a high of 54.9%.⁴ In contrast, juries in non-Cook County Illinois venues have, over the most recent six-month period, returned plaintiff awards in 52.2% of the reported cases. For the five prior volume years, the plaintiff win rates for these same venues varied from 51.6% to 56.6%—so the current results are in line with past history.⁵



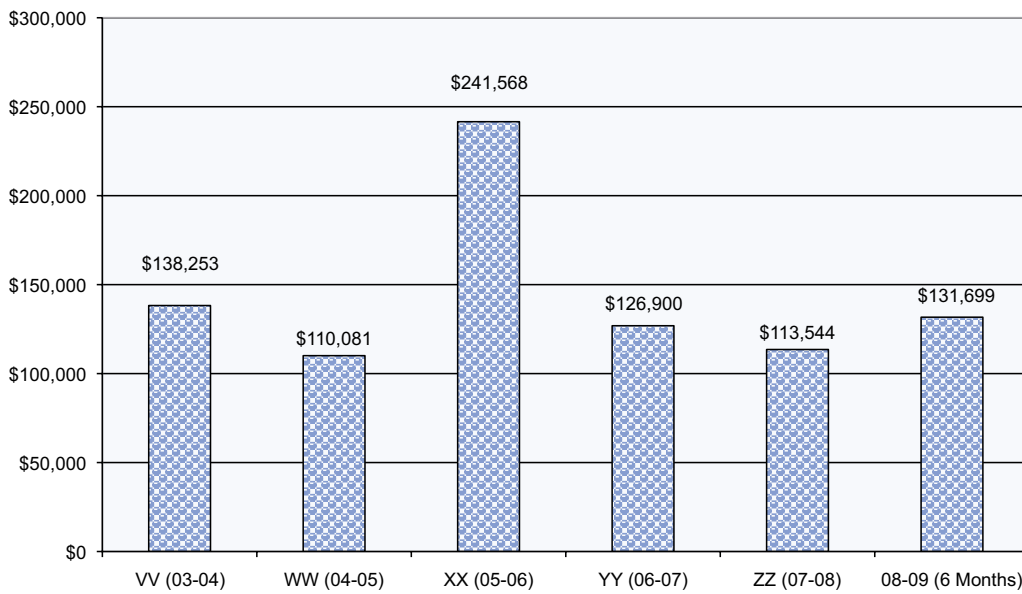
When specific areas of litigation are reviewed, the increasing frequency of defense verdicts over the last six months becomes even more apparent. "Total Traffic" trials produced plaintiff verdicts in only 58.0% of the recent Cook County cases. This compares to a historic range of 62.8% to 72.8% plaintiff wins.⁶ However, the non-Cook County Illinois plaintiff win rate in Total Traffic trials during the current volume (70.9%) falls within its traditional range of 65.2% to 72.4%.⁷ Given that traffic accidents represent the bulk of reported Illinois personal injury litigation⁸, this Cook County defense verdict trend must be quite sobering for members of the plaintiffs' bar.

Similarly, medical malpractice plaintiff win rates in Cook County have also declined during the last six months, coming in at only 24.2%. From 2002-2007, the average plaintiff win rate in Cook County Law Division medical malpractice cases came in at 32.4%.⁹ For Illinois non-Cook County medical malpractice trials, the plaintiff win rate has been 26.3% for the last six months, when from 2002-2007 the average plaintiff win rate was 30.3% for Circuit Court trials.¹⁰ However, it is interesting to note that while the Cook County plaintiff win rate has declined across various case categories when compared to the trial outcomes from the last five volume years, the median verdict and the frequency with which juries are awarding \$5 million or more do not seem to have been impacted by whatever factors are contributing to the defense verdicts trend, as shown in the following charts.

**Cook County Jury Verdict Reporter
Number Of Jury Verdicts Over \$5 Million By Volume Year
(All Case Types)**



**Cook County Jury Verdict Reporter
Median Awards By Volume Year
(All Reported Trials)**



So, why are defense lawyers winning Cook County trials more frequently than they have in the past? I do not believe that anyone can answer that question with certainty at this time. I have heard some speculation that the country's difficult economic conditions are causing jurors to be more tight-fisted. But if the economy is the driving force for the defense, would not the Illinois juries outside of Cook County be demonstrating that same pro-defense tendency? Meanwhile, some plaintiffs' attorneys suggest that the current Cook County verdict trends are the culmination of years of the defense bar's tort reform efforts, with defense claims of frequent frivolous lawsuits now holding sway with the jurors. But why would the impact of the tort reform public relations campaign suddenly kick-in during the past six months rather than appear as a more gradual change? Finally, I've also heard it said that the current defense "trend" is simply a short-term anomaly and that the plaintiff win rate will soon return to normal—but that theory can only be affirmed in hindsight. In the meantime, Illinois civil litigators should take note that it appears as if something out of the ordinary is currently going on in Cook County jury rooms.

Endnotes

1. The Jury Verdict Reporter, a division of Law Bulletin Publishing Co. (Chicago), was founded in 1959 and is the second oldest business of its kind in the U.S. The Jury Verdict Reporter's "volume year" runs from September 1 through August 31, corresponding to the old court calendar.
2. For example, the American Tort Reform Association, "Judicial Hellholes 2008/2009," at page 9 states: "Cook County joined the list of Judicial Hellholes in 2005 and has since maintained its reputation as one of the jurisdictions of greatest concern to civil defendants who fear they will not receive fair trials there. The county has a long-established reputation as a friendly host for lawsuits and is known for its hostility toward corporate defendants."
3. Cook County Jury Verdict Reporter Volume AAA Issue 26, published April 10, 2009.
4. Jury Verdict Reporter, Summary and Category Index Volumes VV (2003-2004) through YY (2006-2007). The indexes separate the reported Illinois civil jury trial outcomes for each volume year into Cook County and non-Cook County by specific case categories, and include statistics regarding plaintiffs' win rates. Summary and Category Index Volume ZZ has not yet been published, so plaintiff win rates for that volume were calculated separately for purposes of this article.
5. Jury Verdict Reporter, Summary and Category Index Volumes VV (2003-2004) through YY (2006-2007), *supra*.
6. Jury Verdict Reporter, Summary and Category Index Volumes VV (2003-2004) through YY (2006-2007). "Total Traffic" combines several distinct case categories (auto; pedestrians; carriers) to generate a single plaintiff win rate percentage. Summary and Category Index Volume ZZ has not yet been published, so plaintiff win rates for that volume were calculated separately for purposes of this article.
7. Jury Verdict Reporter, Summary and Category Index Volumes VV (2003-2004) through YY (2006-2007), *supra*.
8. Jury Verdict Reporter, Summary and Category Index Volumes VV (2003-2004) through YY (2006-2007), *supra*.
9. Kirkton, John L., "Medical Negligence Litigation in Illinois: Facts and Figures," Law Bulletin Publishing Co., 2008. The plaintiff win rate statistics in this article differ slightly from what was reported for Cook County outcomes in "Medical Negligence Litigation in Illinois: Facts and Figures" because that analysis was limited to only Law Division trials.
10. Kirkton, "Medical Negligence Litigation in Illinois: Facts and Figures," *supra*. The plaintiff win rate statistics in this article differ slightly from what was reported for non-Cook County outcomes in "Medical Negligence Litigation in Illinois: Facts and Figures," because that analysis was limited to only Circuit Court trials.

John Kirkton has been the Editor of the Cook County Jury Verdict Reporter, a Division of Law Bulletin Publishing Co., since 1991. Over the past 20 years, the Jury Verdict Reporter has published over 65,000 summaries of civil jury verdicts and settlements for Illinois and Wisconsin venues. For information regarding its many products and services, or to request a sample newsletter, please visit the Jury Verdict Reporter section of the Law Bulletin's webpage (www.lawbulletin.com/legal/jury-verdict) or email the author at kirkton@lbpc.com. Copyright © Law Bulletin Publishing Co. 2009.